



United States District Court
Southern District of New York

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NORBERT COX,

Plaintiff,

-against-

94 Civ. 6361 (DAB)

ORDER

JAMES COLGANE,

Defendant.

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DEBORAH A. BATTS, United States District Judge.

In an Order dated July 18, 2007, the Court acknowledged receipt of the Suggestion of Death of Defendant James Colgane dated June 15, 2007. The Order stated:

Pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure, Plaintiff has 90 (ninety) days from June 15, 2007 to move the Court to substitute the Defendant's estate as the new Defendant, should he wish to go forward. That means that Plaintiff must forward such a request to the Pro Se Office no later than September 7, 2007. Failure by the Plaintiff to take any action within the above-stated time period shall result in the dismissal of the action, pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure.

(Order (DAB), July 18, 2007.) On August 3, 2007, the Pro Se Office received a letter from Plaintiff Cox noting that he wishes to proceed against Defendant Colgane's estate but is "unsure as to the correct fashion and address of submitting this request to the Pro Se Office." In his letter he requested that the Court "assign" him counsel. On August 9, 2007 the Court informed Mr. Cox that the Court "is not in a position to assist you other than to supply the information that appeared in the July 18, 2007

Order." At the same time, the Court formally requested that the Pro Se Office reinstate efforts to obtain counsel from the Pro Bono Panel. As of the date of this Order no further action has been taken in this matter.

Rule 25(a)(1) states that "[u]nless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party." Because the record in this case shows a suggestion of death was filed on July 15, and because more than 90 days have passed without a proper motion for substitution, the cause of action against Defendant Colgane is DISMISSED with prejudice.

The Clerk of the Court is hereby directed to close the case.

SO ORDERED.

DATED: New York, New York

October 31, 2007

Deborah A. Batts

Deborah A. Batts
United States District Judge